

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 06-C-10938-RAP
)	06-C-11580; 06-C-11581 (Cons.)
RUSSELL ROBERT RUIZ,)	
)	DECISION AND ORDER SEALING
Member No. 123414,)	CERTAIN DOCUMENTS
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

Between 2004 and 2006, respondent **Russell Robert Ruiz** (respondent) was convicted on eight criminal charges including, among other things, two counts of corporal injury to a spouse and two counts of driving under the influence of alcohol. Following respondent's convictions, these matters were referred to this court for a hearing and decision as to whether the facts and circumstances surrounding these convictions involved moral turpitude or other misconduct warranting discipline and, if so found, a recommendation as to the discipline to be imposed. Thereafter, respondent participated in and successfully completed the State Bar Court's Alternative Discipline Program (ADP). Accordingly, the court hereby recommends, as set forth below, the imposition of discipline relating to a successful completion of the ADP.

II. Significant Procedural History

On December 16, 2004, respondent pled no contest to and was convicted of making annoying/obscene telephone calls (California Penal Code section 653m, subd. (a)). That same day, respondent also pled guilty to and was convicted of driving a vehicle under the influence of alcohol (California Vehicle Code section 23152, subd. (a).) Respondent was subsequently sentenced to, among other things, three years unsupervised probation and 10 days in county jail.

In May 2006, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) transmitted a certified copy of respondent's record of conviction, in case nos. 06-C-11580 and 06-C-11581, to the State Bar Court pursuant to Business and Professions Code sections 6101-6102 and California Rules of Court, rule 9.5, et seq.

On May 19, 2006, the Review Department of the State Bar Court issued two orders referring case nos. 06-C-11580 and 06-C-11581 to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the facts and circumstances surrounding respondent's convictions are found to involve moral turpitude or other misconduct warranting discipline.

Respondent sought to participate in the ADP, and on October 26, 2006, these matters were referred to the ADP.

On November 28, 2006, however, respondent pled no contest to and was convicted on the following charges:

- (1) Two felony counts of corporal injury to a spouse (California Penal Code section 273.5, subd. (a));
- (2) Driving under the influence of alcohol (California Vehicle Code section 23152, subd. (a));
- (3) Disobeying a domestic relations court order (California Penal Code section 273.6, subd. (a));
- (4) Public intoxication (California Penal Code section 647, subd. (f)); and

(5) Driving while suspended for prior DUI conviction (California Vehicle Code section 14601.2, subd. (a)).

Respondent was subsequently sentenced to, among other things, three years' probation; 180 days in county jail, consecutive to 180 days on his criminal probation matters; an 18-month alcohol and drug program; a year-long batterer's intervention program; and a clean and sober program.

On January 9, 2007, the Review Department of the State Bar Court issued an order placing respondent on interim suspension pending disposition in case no. 06-C-10938.

Respondent's interim suspension became effective on February 5, 2007.

In May 2007, the State Bar transmitted a certified copy of respondent's record of conviction, in case no. 06-C-10938, to the State Bar Court pursuant to Business and Professions Code sections 6101-6102 and California Rules of Court, rule 9.5, et seq.

On May 30, 2007, the Review Department of the State Bar Court issued an order referring case no. 06-C-10938 to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the facts and circumstances surrounding respondent's convictions are found to involve moral turpitude or other misconduct warranting discipline.

On July 9, 2007, case no. 06-C-10938 was consolidated with case nos. 06-C-11580 and 06-C-11581. The parties subsequently entered into a Stipulation Re Facts and Conclusions of Law which was received by the State Bar Court on October 1, 2007. On November 9, 2007, respondent submitted a nexus statement establishing a nexus between his alcohol abuse issue and his misconduct.

On April 7, 2008, the court lodged the Confidential Statement of Alternative Dispositions and Orders, the Contract and Waiver for Participation in the State Bar Court's ADP (Contract), and the parties' Stipulation Re Facts and Conclusions of Law. That same day, the court issued an order formally accepting respondent into the ADP.

On March 30, 2011, the court issued an order finding that respondent successfully completed the ADP and this matter was submitted for decision.

III. Findings of Fact and Conclusions of Law

The Stipulation Re Facts and Conclusions of Law, including the court's order approving the Stipulation Re Facts and Conclusions of Law, is attached hereto and hereby incorporated by reference, as if fully set forth herein.

The Stipulation Re Facts and Conclusions of Law sets forth the factual findings, legal conclusions, and aggravating and mitigating circumstances in this matter. Below is an abbreviated summary of this matter.

A. Case No. 06-C-11580

Facts

In August 2004, respondent left several telephone message recordings for Terence Brennan (Brennan). In these recordings, respondent threatened to hunt down and kill Brennan. Brennan feared for his safety and believed respondent was angry due to a relationship Brennan had with respondent's wife. Brennan contacted the Santa Barbara County Sheriff's Department and reported the threatening phone calls.

Respondent was subsequently arrested for making criminal threats. On December 16, 2004, respondent pled no contest to and was convicted on a misdemeanor violation of Penal Code section 653m, subd. (a), making annoying/obscene telephone calls. Respondent was

sentenced to three years unsupervised probation and five days in county jail, among other conditions.

Conclusions of Law

Although the facts and circumstances surrounding case no. 06-C-11580 do not involve moral turpitude, they do involve other misconduct warranting discipline.

B. Case No. 06-C-11581

Facts

On September 12, 2004, respondent was pulled over for failing to make a complete stop at a stop sign. The deputy detected an odor of alcohol coming from respondent's vehicle. Respondent subsequently failed a battery of field sobriety tests and was arrested for driving under the influence of alcohol.

On December 16, 2004, respondent pled guilty to and was convicted on a misdemeanor violation of Vehicle Code section 23152, subd. (a), driving a vehicle under the influence of alcohol. Respondent was sentenced to three years unsupervised probation and ten days in county jail, among other conditions.¹

Conclusions of Law

Although the facts and circumstances surrounding case no. 06-C-11581 do not involve moral turpitude, they do involve other misconduct warranting discipline.

¹ In December 1994, respondent was convicted of felony driving under the influence. At the time of respondent's felony conviction, he had four prior misdemeanor convictions for driving under the influence of alcohol.

C. Case No. 06-C-10938

Facts

On November 5, 2005, respondent became angry with his wife, Amanda Money (Money), and slapped her, causing her to have a bloody nose. Money did not initially report the incident or seek medical attention.

On or about December 30, 2005, respondent and Money had an argument. As a result, respondent left their house and did not return until the next day. Upon respondent's return, Money witnessed him park his vehicle and begin staggering toward the house. The police were called and respondent was ultimately arrested for driving under the influence.

After being released from custody that same day, respondent returned to the house around 5 p.m. At about 8 p.m., Money called the police to report that respondent had punched her hard in the back of the head, causing a large lump to form. Officers came to the scene, confirmed the injury, and respondent was again arrested. At this time, Money also reported the November 5, 2005 incident.

Respondent was booked into custody at the Santa Barbara County jail, and subsequently served with a temporary protective order (TPO). The TPO ordered no contact between respondent and Money, including no telephone calls. After being served with the protective order, however, respondent called Money from jail.

In March 2006, the police responded to arguments between respondent and Money at their home on multiple occasions. On at least two occasions, the police were able to defuse the situation by calling a cab and sending respondent to a hotel. During these incidents, respondent displayed strong objective signs of intoxication.

On March 23, 2006, respondent was spotted staggering toward the house. He again displayed strong objective signs of intoxication, and told police officers that he was not going to

stay in a hotel because they were too expensive. Respondent was ultimately arrested for public intoxication.

On June 6, 2006, respondent was cited for driving on a suspend license. Respondent's driver's license had been suspended due to his DUI conviction.

On November 28, 2006, respondent pled no contest to and was convicted of the following charges: (1) two felony counts of corporal injury to a spouse (California Penal Code section 273.5, subd. (a)); (2) driving under the influence of alcohol (California Vehicle Code section 23152, subd. (a)); (3) disobeying a domestic relations court order (California Penal Code section 273.6, subd. (a)); (4) public intoxication (California Penal Code section 647, subd. (f)); and (5) driving while suspended for prior DUI conviction (California Vehicle Code section 14601.2, subd. (a)). Respondent was subsequently sentenced to, among other things, three years probation; 180 days in county jail, consecutive to 180 days on his criminal probation matters; an 18-month alcohol and drug program; a year-long batterer's intervention program; and a clean and sober program.

Conclusions of Law

Although the facts and circumstances surrounding case no. 06-C-10938 do not involve moral turpitude, they do involve other misconduct warranting discipline.

IV. Aggravation and Mitigation

The parties stipulated to factors in aggravation and mitigation. In aggravation, respondent received a public reproof in 1997 (case no 94-C-16002) related to his aforementioned felony DUI conviction. In addition, respondent's misconduct harmed Money and evidenced multiple acts of wrongdoing and a pattern of misconduct. In mitigation, respondent cooperated with the State Bar during the disciplinary proceedings.

In addition, respondent successfully completed the ADP. Respondent's successful completion of the ADP, which required his successful participation in the LAP, as well as the Certificate of One Year Participation in the Lawyer Assistance Program – Substance Use, qualify as clear and convincing evidence that respondent no longer suffers from the substance abuse issue which led to his misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a mitigating circumstance in this matter. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(iv).)

V. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, to preserve public confidence in the legal profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

The parties submitted briefs on the issue of discipline. After considering the parties' briefs, including the case law and standards cited therein, the court advised the parties of the discipline that would be recommended to the Supreme Court if respondent successfully completed the ADP and the discipline that would be recommended to the Supreme Court if respondent was terminated from, or failed to successfully complete, the ADP.

In determining the appropriate discipline in this matter if respondent successfully completed the ADP, the court considered the discipline recommended by the parties, as well as standards 1.3, 1.4, 1.5, 1.6, 1.7(a), and 3.4. The court also considered and distinguished *In re Carr* (1988) 46 Cal.3d 1089; *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208; *In re Alkow* (1966) 64 Cal.2d 838; and *In re Otto* (1989) 48 Cal.3d 970.

After agreeing to the court's proposed high and low levels of discipline, respondent executed the Contract to participate in the ADP, and respondent's period of participation in the ADP commenced.

Thereafter, respondent successfully participated in the ADP and, as set forth in the court's March 30, 2011 order, successfully completed the ADP. Accordingly, the court recommends imposition of the discipline set forth in the Confidential Statement of Alternative Dispositions and Orders relating to a successful completion of the ADP.

VI. Discipline Recommendation

It is hereby recommended that respondent **Russell Robert Ruiz**, State Bar Number 123414, be suspended from the practice of law in California for three years, that execution of that period of suspension be stayed, and that he be placed on probation² for a period of three years subject to the following conditions:

1. Respondent Russell Robert Ruiz is suspended from the practice of law for one year (with credit given for the period of interim suspension which commenced on February 5, 2007, and ended on April 11, 2008).
2. Respondent Russell Robert Ruiz must also comply with the following additional conditions of probation:
 - a. During the probation period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
 - b. Within 10 days of any change, respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California (Office of Probation), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;
 - c. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of

² The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;

- d. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the period of probation and no later than the last day of the probation period;

- e. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the probation conditions;
- f. Within one year after the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session;
- g. Respondent must comply with all conditions of probation imposed in the underlying criminal matters and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation; and
- h. Respondent must comply with all provisions and conditions of his Participation Agreement with the Lawyer Assistance Program (LAP) and must provide the Office of Probation with certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of his Participation Agreement to the Office of Probation. Respondent must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and his compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Respondent will be relieved of

this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP.

At the expiration of the period of probation, if Russell Robert Ruiz has complied with all conditions of probation, the three-year period of stayed suspension will be satisfied and that suspension will be terminated.

A. Multistate Professional Responsibility Examination

It is also recommended that Russell Robert Ruiz take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the Office of Probation in Los Angeles, within one year after the effective date of the discipline herein. Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage. (But see Cal. Rules of Court, rule 9.10(b), and Rules Proc. of State Bar, rule 5.162.)

B. Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. It is further recommended that costs be paid with respondent's membership fees for the year 2012. If respondent fails to pay costs as described above, or as may be modified by the State Bar Court, costs are due and payable immediately.

VII. Direction Re Decision and Order Sealing Certain Documents

The court directs a court case administrator to file this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 5.388 of the Rules of Procedure, all other

documents not previously filed in this matter are ordered sealed pursuant to rule 5.12 of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosure. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

IT IS SO ORDERED.

Dated: June 23, 2011.

RICHARD A. PLATEL
Judge of the State Bar Court